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Attorney Docket Number: ESP0291

Application Number: 09/759,935

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**REMARKS**

In an office action mailed on 02/09/2007, claims 22-33 are rejected under 35 USC 102(e) as anticipated by Son. US Pat. #6697376.

**Son Does Not Teach Use of the Group Identifier in a Terminal Request for VOD Data**

The claims are directed to a manner of responding to requests from subscriber devices for video on demand. For example, claim 22 describes a headend adapted to receive a request for video on demand data including the group identifier and to enable one or more modulators associated with the group identifier to pass the video on demand data downstream. Claim 26 recites an application server adapted to extract the subscriber group identifier received in a request for video on demand data. Claim 30 recites receiving a video on demand data request from particular subscriber equipment of the subscriber group, where the request includes the subscriber group identifier. Claim 32 describes a subscriber terminal device that includes the group identifier in a request for video on demand data.

In Son subscriber equipment does transmit the Logical Node identifier upstream, but not in a request for video on demand data. Figures 6 and 7, and the corresponding description at col. 9, line 53 to col. 10, line 29 show very clearly that the Logical Node identifier is not sent with the VOD request of the subscriber equipment. Rather, the Logical Node id is received by the equipment once it is assigned by the SCM, and the equipment later transmits the id back in order to provide network configuration verification to the SCM. The upstream transmission is not done in, or in conjunction with, a VOD request.

**Use of "Adapted to" in Claims is not Per Se Non-Structural**

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The Applicant strongly disagrees with the Examiner's continued reliance on asserting that "adapted to" limitations are per se functional. The Examiner has not, as required by PTO examination guidelines, traversed with specificity the reasons why a video server or headend adapted in the manner recited in the claims would in fact be structurally equivalent to the headend/video server of Son. The Examiner has not addressed the Applicant's reasonable assertion that the adaptations recited in the claims give rise to structural differences not found in systems that don't perform as described. Particularly, the adaptations may take the form of software or other logic which gives rise to structural differences in the configuration of, for example, memory devices utilized by the system. It is well established in both case law and PTO practice that software or other logic imprinted in memory devices imparts structural distinction.

The Applicant has added claims specifically reciting a head end and video server including software imparting the recited adaptations. Neither Son nor other prior art previously cited in this application comprises such software.

To reiterate, "adapted to" limitations are not per se non-structural. Rather, the Examiner must look at whether they place a material limitation on the structure of the device, that is material to patentability. It is, as always, the Examiner's responsibility to demonstrate why the "adapted to" limitation is non-distinguishing in a structural sense. A mere summary assertion that "adapted to" limitations are non-limiting because they are functional is insufficient.

In fact, a head-end, video server, or other digital device or system "adapted to" carry out certain acts is certainly distinguishable from a system not so adapted. This is so because under the PTO's own examination guidelines, as well as established case law, a device may be so adapted by incorporating in it a unique arrangement of logic in the form of software and/or hardware circuits. Incorporating such logic imparts sufficiently distinguishing structure to a digital memory or other electronic device. Thus, a device "adapted to" perform specific processing is indeed structurally distinct from other such devices that are not so adapted, because the adaptations necessary to carry out the

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processing impart structural distinction, even if such adaptations (such as software, circuits, or logic) are not explicitly recited.

Furthermore, it is notoriously difficult to claim arrangements of logic for carrying out unique processing features in digital systems, in a manner that avoids trivial design-arounds that merely re-arrange said logic, without resort to "adapted to" or equivalent claim constructs.

In summary, it is the Examiner's responsibility to positively argue why a headend, video server, or other device adapted to carry out the specific processing features recited in the claims is structurally identical to a device not adapted to carry out such processing. The Examiner cannot merely ignore the recited claim features because they are presented as an adaptation, and bears the responsibility of demonstrating that the headend of Son is also adapted to carry out the processing features (e.g. incorporating the structure imparted by similar software or other logic) recited in the claims, and is thus structurally equivalent.

### Conclusion

For at least the reasons provided, all of the claims are distinguished over the cited references and should be allowed. If an interview would help further the prosecution, the Examiner is urged to contact the Applicant at the numbers provided below.

Respectfully Submitted by:

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